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Ramanathan a/l Velu @ Murugai v Jeganathan a/l S Periasamy & Anor (Majlis Peguam Malaysia, intervener)

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COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO W-02–1720–10 OF 2014
MOHD HISHAMUDIN YUNUS, HAMID SULTAN AND UMI KALTHUM JJCA
C 8 APRIL 2016

Legal Profession — Disciplinary board — Appeal against decision of disciplinary board — Disciplinary committee found appellant liable for misconduct — Disciplinary committee recommended appellant suspended from practice for six months — Disciplinary board imposed greater punishment of striking out appellant's name from Roll as advocates and solicitors — Whether there was lack of procedural compliance by disciplinary committee and disciplinary board — Legal Profession (Disciplinary Proceedings) (Investigating Tribunal and Disciplinary Committee) Rules 1994 rr 16, 17(2), 24 & 26(2)

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This was an appeal by the appellant against the decision of the Advocates and Solicitors Disciplinary Board ('DB') which struck out his name from the Roll of Advocates and Solicitors. The disciplinary committee ('DC') heard the
F complaint against the appellant by the respondents and found the appellant liable of misconduct. The DC recommended that the appellant be suspended from practice for a period of six months. After considering the report by the DC and hearing submission from the appellant, the DB imposed a greater punishment of striking out the appellant's name from the Roll. On appeal, the
G learned trial judge sustained the order of the DB. Hence, this appeal. The appellant contended that there was lack of procedural compliance by the DC and DB pursuant to rr 16, 17(2), 24 and 26(2) of the Legal Profession (Disciplinary Proceedings) (Investigating Tribunal and Disciplinary Committee) Rules 1994 ('the Rules').

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Held, setting aside the order of DB as well as the recommendation of the DC:

(1) The court found that there was substantial non-compliance of the Rules by the DC and the subsequent enhancement of punishment by the DB
I without the benefit of statutorily required documents under the rules had compromised the integrity of the decision making process. The court would have heard the merit of the appeal and might have given less weight to the lack of procedural compliance if the DB had just affirmed

the decision of the DC. Since the DB had struck out the appellant's name from the Rolls, the court ordered the matter to be heard afresh before a newly constituted DC (see para 8).

[Bahasa Malaysia summary

Ini adalah rayuan oleh perayu terhadap keputusan Lembaga Tatatertib Peguambela dan Peguamcara ('LT') yang telah mengeluarkan namanya daripada Daftarai Peguambela dan Peguamcara. Jawatankuasa tatatertib ('JT') telah mendengar aduan terhadap perayu oleh responden-responden dan mendapati perayu bertanggungjawab kerana salah laku. JT telah mengesyorkan agar perayu digantung daripada amalan untuk tempoh enam bulan. Setelah mempertimbangkan laporan JT dan mendengar hujah daripada perayu, LT telah mengenakan hukuman lebih berat dengan membatalkan nama perayu dari Daftarai. Atas rayuan, hakim perbicaraan yang bijaksana telah mengekalkan perintah LT. Justeru, rayuan ini. Perayu telah menegaskan bahawa tiada pematuhan prosedur oleh JT dan LT menurut kk 16, 17(2), 24 dan 26(2) Kaedah-Kaedah Profesyen Undang-Undang (Prosiding Tatatertib) (Jawatankuasa Tribunal Siasatan dan Tatatertib) 1994 ('Kaedah tersebut').

Diputuskan, mengetepikan perintah LT dan syor JT:

(1) Mahkamah mendapati bahawa terdapat ketidakpatuhan substantial terhadap Kaedah tersebut oleh JT dan penambahan hukuman selanjutnya oleh LT tanpa manfaat dokumen statutori yang diperlukan di bawah Kaedah tersebut telah mengkompromi integriti proses membuat keputusan. Mahkamah mungkin telah mendengar rayuan itu dan mungkin telah memberi kurang beban kepada ketiadaan pematuhan prosedur jika LT telah mengesahkan sahaja keputusan JT. Oleh kerana LT telah membatalkan nama perayu daripada Daftarai, mahkamah telah memerintahkan perkara itu didengar semula di hadapan JT baru yang dibentuk (lihat perenggan 8).]

Notes

For cases on appeal against decision of disciplinary board, see 9 *Mallal's Digest* (5th Ed, 2015) paras 1512–1513.

Legislation referred to

Legal Profession (Disciplinary Proceedings) (Investigating Tribunal and Disciplinary Committee) Rules 1994 rr 16, 17(2), 24, 26(2)
Legal Profession Act 1976 s 103D(2)

Appeal from: Originating Motion No 17D-4–02 of 2014 (High Court, Kuala Lumpur)

T Gunaseelan (Rama Velu & Assoc) for the appellant.

Not present for the respondent.
Hoi Jack S'ng (Lee Hishammuddin Allen & Gledhill) for the intervener.

Hamid Sultan JCA (delivering judgment of the court):

[1] The appellant's appeal is related to the decision of the Advocates and Solicitors Disciplinary Board ('the DB') which struck out the appellant's name from the Rolls of Advocates and Solicitors. The learned High Court judge on appeal sustained the order of the DB.

[2] Before us, it was contended that there was non-compliance of disciplinary rules as well as procedural fairness at the time the DB made the decision to strike out the appellant from the Rolls. We found merit in the procedural complaint and in consequence did not deal with the merit of the appeal as we found that it was a fit and proper case for it to be sent back to the disciplinary committee ('the DC') for a fresh hearing before a newly constituted DB with an order that the DC shall record the evidence in accordance with r 24 of the Legal Profession (Disciplinary Proceedings) (Investigating Tribunal and Disciplinary Committee) Rules 1994. In consequence, we set aside the order of DB as well as the recommendation of the DC. Our decision was unanimous. My learned sister Umi Kalthum Abdul Majid JCA has read the draft judgment and approved the same.

BRIEF FACTS

[3] The facts of the case have been well articulated by the learned High Court judge. In the instant case, the complaint was investigated by the investigating tribunal which recommended that a formal investigation be done by a DC. The DC heard the complaint and found the appellant liable for misconduct and recommended that the appellant be suspended from practice for a period of six months.

[4] Subsequently, the DB gave a notice to appear pursuant to s 103D(2) of the Legal Profession Act 1976 ('the LPA 1976'). The DB was said to have considered the report made by the DC and after hearing the appellant and his counsel imposed a greater punishment of striking out the appellant's name from the Rolls.

[5] The learned counsel complained the conduct of DC as well as DB as a procedural point to say that the rules as well as procedural fairness was not accorded to the appellant.

[6] The complaints of the appellant are related to rr 16, 17(2), 24 and 26(2) of the Legal Profession (Disciplinary Proceedings) (Investigating Tribunal and

Disciplinary Committee) Rules 1994 for lack of procedural compliance. The DB, in the instant case, had struck out the appellant's name from the Rolls and that was not the recommendation of the DC. The appellant complained that the DB ought not to have done so without ensuring there was procedural fairness before the DC and to do so the record of DC must be complete.

[7] The complaints of the appellant are related to rr 16, 17(2), 24 and 26(2) of the Legal Profession (Disciplinary Proceedings) Investigating Tribunal and Disciplinary Committee) Rules 1994. The said rules read as follows:

> Rule 16 Record of proceedings before Investigating Tribunal
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> The Investigating Tribunal shall make a record of the proceedings before it.
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> Rule 17 Report of Investigating Tribunal
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> (2) The report of the Investigating Tribunal together with the record of the investigation proceedings shall be sent to the Director.
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> Rule 24 Record of proceedings before Disciplinary Committee
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> The Disciplinary Committee shall make a record of all the evidence given before it.
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> Rule 26 Report of Disciplinary Committee
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> (2) The report of the Disciplinary Committee together with the record of the investigation proceedings shall be sent to the Director within two months from the date of the appointment of the Disciplinary Committee.

[8] In the instant case, we found substantial non-compliance of the rules by the DC and the subsequent enhancement of punishment by the DB without the benefit of statutorily required documents under the rules had in our view compromised the integrity of the decision making process. Had the DB had just affirmed the DC decision we would have heard the merit of the appeal and might have given less weight to the lack of procedural non-compliance. However, in this case, the DB had struck out the appellant's name from the Rolls. In consequence, we took the view that the matter should be heard afresh before a newly constituted DC. In consequence, we made the above said order.

[9] The order of DC as well as DB was set aside.

We hereby ordered so.

Order of DB and recommendation of DC set aside.

Reported by Dzulqarnain Ab Fatar